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C O N F I D E N T I A L SECTION 01 OF 04 ROME 001971

SIPDIS

E.O. 12958: DECL: 05/06/2013

TAGS: PREL PGOV PGOV PGOV IT ITPREL ITPREL ITPREL

SUBJECT: PM BERLUSCONI'S LEGAL PROBLEMS COMING TO A HEAD

REF: A. ROME 1835

1B. ROME 0757

1C. ROME 0355

1D. 02 ROME 0348

CONFIDENTIAL

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CLASSIFIED BY: AMBASSADOR MEL SEMBLER FOR REASONS 1.5 (B) AND (D)

SUMMARY

11. (C) SENATE PRESIDENT PERA TOLD THE AMBASSADOR LAST MONTH THAT HE WAS CONCERNED ABOUT PRIME MINISTER BERLUSCONI'S LEGAL TROUBLES, AND FEARS THAT A MILAN COURT HE BELIEVES IS POLITICALLY BIASED AGAINST THE PM MAY ISSUE ITS VERDICT IN A JUDGE BRIBERY CASE TO COINCIDE WITH THE BEGINNING OF ITALY'S EU PRESIDENCY IN JULY. BERLUSCONI, IN THE WAKE OF THE APRIL 29 CORRUPTION CONVICTION (IN A DIFFERENT CASE) OF HIS FORMER LAWYER, HAS GONE ON THE ATTACK. VIEWING HIS LEGAL IMBROGLIO AS A POLITICAL STRUGGLE AGAINST LEFT-LEANING MAGISTRATES BENT ON TOPPLING HIM FROM POWER, BERLUSCONI HAS CALLED ON HIS GOVERNING COALITION ALLIES TO RALLY AROUND HIM. THEY, IN TURN, ARE HOPEFUL THAT A LEGISLATIVE SOLUTION CAN BE FOUND THAT WOULD PROTECT THE PM AND AVERT A HEAD ON COLLISION BETWEEN ITALY'S POLITICAL LEADERSHIP AND THE JUDICIAL BRANCH. A DRAFT LAW THAT WOULD PROTECT HIGH OFFICIALS FROM PROSECUTION WHILE IN OFFICE MAY SOON BE SUBMITTED IN THE PARLIAMENT, BUT THE CENTER-LEFT OPPOSITION IS SO FAR REFUSING TO SUPPORT IT.

12. (C) IN THE EVENT BERLUSCONI IS CONVICTED, HE WOULD HAVE THE RIGHT TO APPEAL AND WOULD REMAIN FREE UNLESS THE CONVICTION WERE UPHELD BY THE SUPREME COURT. VARIOUS POLITICAL SCENARIOS ARE POSSIBLE. IF THE VERDICT IS RENDERED DURING ITALY'S EU PRESIDENCY, THE MOST LIKELY OUTCOME WOULD BE BERLUSCONI'S CALLING FOR A VOTE OF CONFIDENCE AND REMAINING IN OFFICE. THE TEMPTATION TO MOVE TO NEW ELECTIONS

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AND CHALLENGE THE CENTER-LEFT IN THE VOTING BOOTH WOULD INCREASE AFTER THE PRESIDENCY, ALTHOUGH ONLY PRESIDENT CIAMPI HAS THE POWER TO CALL THEM. CIAMPI, CONCERNED ABOUT ITALY'S INTERNAL STABILITY AND INTERNATIONAL REPUTATION, IS TRYING TO PLAY A BALANCING ROLE BY URGING THAT JUDICIAL SENTENCES BE RESPECTED AND THE RIGHTS OF THE ACCUSED BE PROTECTED. WE ARE LESS CONCERNED ABOUT ITALY'S POLITICAL STABILITY THAN WE ARE ABOUT THE IMPLICATIONS OF A CONVICTION FOR BERLUSCONI'S ABILITY TO CONDUCT A SUCCESSFUL EU PRESIDENCY--AND HELP US ACHIEVE OUR GOALS--IF HE IS TARNISHED BY A GUILTY VERDICT.  
END SUMMARY.

SENATE PRESIDENT WORRIED

13. (C) SENATE PRESIDENT MARCELLO PERA ON APRIL 18 EXPLAINED TO THE AMBASSADOR, WHO PERA HAD ASKED TO VISIT HIM IN HIS OFFICE, THAT HE WAS WORRIED ABOUT PM BERLUSCONI'S LEGAL TROUBLES (REF A). IT WAS THE SECOND TIME THIS YEAR THAT PERA HAD EXPRESSED SUCH CONCERNS TO AMBASSADOR SEMBLER (REF B). PERA WAS CONVINCED (NOT EXPLAINING WHAT LEAD HIM TO THE CONCLUSION) THAT A MILAN TRIBUNAL HAD ALREADY REACHED A VERDICT IN THE SME TRIAL (NOTE: THE PM IS ACCUSED OF BRIBING A JUDGE TO INFLUENCE A 1986 RULING ON A CORPORATE TAKEOVER BATTLE THAT INVOLVED A BID BY BERLUSCONI-OWNED FININVEST TO PURCHASE THE THEN STATE-OWNED FOOD CONGLOMERATE, SME. END NOTE). PERA SPECULATED THAT MAGISTRATES IN MILAN WHO, HE SAID, WERE WAGING A POLITICAL BATTLE AGAINST BERLUSCONI, WERE WAITING FOR AN "OPPORTUNE" MOMENT TO MAKE THE VERDICT PUBLIC. HE WAS WORRIED THEY WOULD DO SO CLOSE TO JULY 1, WHEN ITALY WILL TAKE OVER THE ROTATING EU PRESIDENCY, FOR MAXIMUM

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POLITICAL EFFECT. THE GOI, PERA SAID, WAS CONSIDERING ITS OPTIONS TO COUNTER WHAT BERLUSCONI BELIEVES IS A POLITICAL VENDETTA BEING EXERCISED THROUGH PROSECUTORIAL MEANS. BECAUSE THE ISSUE WAS EXTREMELY SENSITIVE, HE EMPHASIZED THAT IT WOULD BE IMPORTANT TO HAVE PRESIDENT CIAMPI ON BOARD WITH ANY LEGISLATIVE SOLUTION.

BERLUSCONI COMES OUT SWINGING

14. (C) SINCE THE AMBASSADOR'S DISCUSSION WITH PERA, BERLUSCONI APPEARS TO HAVE DECIDED THAT THE BEST DEFENSE IS A GOOD OFFENSE. IN AN OPEN LETTER PUBLISHED BY A NEWSPAPER (IL FOGLIO) SYMPATHETIC TO THE CENTER-RIGHT, BERLUSCONI COUCHED HIS LEGAL PROBLEMS IN POLITICAL TERMS AND UPPED THE ANTE. REFERENCING THE PROSECUTION AND POLITICAL DESTRUCTION OF HIS FRIEND AND POLITICAL MENTOR, FORMER PM BETTINO CRAXI, BY THE SAME MILAN TRIBUNAL NOW ADJUDICATING THE SME CASE, BERLUSCONI underscored that he would defend himself. CRAXI, WHO DIED IN DISGRACE AND EXILE IN TUNISIA, WAS LEFT TO TWIST IN THE WIND BY HIS ERSTWHILE POLITICAL ALLIES. BERLUSCONI MADE CLEAR TO

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ACTION EUR-00

INFO	LOG-00	CIAE-00	SRPP-00	VC-00	TEDE-00	INR-00	IO-00
	L-00	VCE-00	AC-01	NSAE-00	OMB-01	PA-00	PM-00
	PRS-00	ACE-00	P-00	SP-00	SS-00	TRSE-00	T-00
	USIE-00	PMB-00	DRL-01	G-00	SAS-00	/003W	

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P 071649Z MAY 03  
FM AMEMBASSY ROME  
TO SECSTATE WASHDC PRIORITY 9726  
INFO NATO EU COLLECTIVE PRIORITY  
AMCONSUL FLORENCE PRIORITY  
AMCONSUL MILAN PRIORITY  
AMCONSUL NAPLES PRIORITY  
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C O N F I D E N T I A L SECTION 02 OF 04 ROME 001971

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HIS COALITION PARTNERS THAT THEY SHOULD THINK LONG AND HARD ABOUT ALLOWING HIM TO SUFFER THE SAME FATE. WHILE BERLUSCONI IS CERTAINLY LOOKING TO ENSURE HIS OWN POLITICAL SURVIVAL, THE PM'S BEHAVIOR SHOULD ALSO BE VIEWED THROUGH THE PRISM OF HIS CLOSE RELATIONSHIP TO CRAXI; HIS BELIEF THAT THE POWER OF  
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MAGISTRATES PURSUING WHAT HE SEES AS A POLITICAL AGENDA (HIS REMOVAL FROM POWER) THROUGH JUDICIAL MEANS MUST BE BROKEN; AND HIS RECOGNITION THAT THE CENTER-LEFT OPPOSITION IS WEAK.

15. (SBU) TACTICALLY, BERLUSCONI IS PURSUING A THREE-TRACK APPROACH. FIRST, HE USED A VOLUNTARY MAY 5 PUBLIC DEPOSITION IN MILAN TO CONDUCT A POLITICAL DEFENSE, SPEAKING AS MUCH TO PUBLIC OPINION AS TO THE ADJUDICATING MAGISTRATES. BERLUSCONI REVEALED THAT CRAXI HAD ASKED HIS FININVEST COMPANY TO INTERVENE TO HELP BLOCK THE PUBLIC SALE OF SME TO RIVAL INDUSTRIALIST CARLO DE BENEDETTI, BUT ASSERTED THAT BOTH HE AND CRAXI WERE ACTING IN THE PUBLIC INTEREST AS THE SALE WOULD HAVE DISADVANTAGED THE ITALIAN TREASURY. BERLUSCONI ALSO SAID HE HAD PROOF THAT FORMER PM GIULIANO AMATO KNEW ABOUT A KICKBACK DE BENEDETTI MADE TO THE NOW DEFUNCT CHRISTIAN DEMOCRATIC PARTY. HE ALSO IMPLICITLY IMPUGNED EUROPEAN COMMISSION PRESIDENT PRODI, WHO WAS PRESIDENT OF THE STATE-OWNED HOLDING COMPANY (IRI) INVOLVED IN THE PLANNED SME SALE (NOTE: PRODI IS ALSO WIDELY TOUTED AS THE MOST LIKELY CANDIDATE TO LEAD THE CENTER-LEFT IN THE NEXT NATIONAL ELECTIONS. END NOTE.) ALL OF THIS WAS TO CONVEY TO THE PUBLIC THAT, "THERE WERE A LOT OF SHADY DEALINGS SURROUNDING THE SME AFFAIR, BUT SEE HOW THE MAGISTRATES ARE ONLY OUT TO GET ME, WHO WON YOUR VOTES IN A DEMOCRATIC ELECTION."

16. (C) SECONDLY, BERLUSCONI IS EXAMINING HIS LEGISLATIVE OPTIONS. ONE POSSIBLE ROUTE IS PASSING A LAW, AS EXISTS IN SOME OTHER EUROPEAN COUNTRIES, THAT WOULD PROTECT HIGH OFFICIALS (THE PM, PRESIDENT OF THE REPUBLIC, AND PRESIDENTS OF THE SENATE AND HOUSE OF DEPUTIES) FROM PROSECUTION WHILE  
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THEY ARE SERVING THEIR TERMS. A MODERATE CENTER-LEFT POLITICIAN EARLIER THIS YEAR PROPOSED SUCH A MEASURE, WHICH BERLUSCONI AS WELL AS PERA AND PIERFERDINANDO CASINI, PRESIDENT OF THE HOUSE OF DEPUTIES, HAVE NOW ENDORSED. HOWEVER, PIERO FASSINO, LEADER OF ITALY'S LARGEST LEFT-WING PARTY (THE DEMOCRATS OF THE LEFT), HAS REJECTED IT, ARGUING THAT "POLITICAL CONDITIONS ARE NOT RIGHT FOR A MEASURE THAT WOULD PROTECT CURRENT OFFICE-HOLDERS." THE GOVERNING MAJORITY COULD PASS SUCH A LAW ON ITS OWN, BUT WITHOUT SOME CENTER-LEFT SUPPORT IT WOULD BE MORE SUSCEPTIBLE TO

ALLEGATIONS THAT IT WAS CRASSLY SELF-SERVING. ANOTHER ALTERNATIVE IS TO REINTRODUCE FULL PARLIAMENTARY IMMUNITY FOR SITTING LEGISLATORS. IMMUNITY WAS LIFTED IN PART IN 1993 TO ALLOW MAGISTRATES TO PURSUE SWEEPING ANTI-CORRUPTION INVESTIGATIONS. FOR BERLUSCONI, REINSTITUTING PARLIAMENTARY IMMUNITY WOULD BE SWEET REVENGE ON THE JUDICIAL BRANCH. HOWEVER, PASSAGE WOULD REQUIRE CHANGES TO THE CONSTITUTION AND, THEREFORE, A MINIMUM OF SIX MONTHS.

**17.** (U) FINALLY, BERLUSCONI'S LAWYERS HAVE THREATENED TO CALL HUNDREDS OF ADDITIONAL WITNESSES--INCLUDING MINISTERS IN THE BERLUSCONI GOVERNMENT AND FORMER HIGH RANKING OFFICIALS--IN AN ATTEMPT TO DELAY A VERDICT AS LONG AS POSSIBLE. HOWEVER, THE DECISION WHETHER TO ALLOW THESE WITNESSES RESTS WITH THE MILAN COURT.

CONVICTION SCENARIOS

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**18.** (SBU) THE MILAN TRIBUNAL WILL RULE ON BERLUSCONI'S CASE AS A COURT OF "FIRST INSTANCE". THE LOSING SIDE (EITHER PM  
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OR PROSECUTOR) WOULD HAVE THE RIGHT TO APPEAL THE VERDICT. UNDER ITALIAN LAW, A PERSON APPEALING A CRIMINAL CONVICTION IS PERMITTED TO REMAIN FREE UNTIL A FINAL RULING IS RENDERED (UNLESS BEING HELD IN PREVENTIVE CUSTODY, INAPPLICABLE TO THE CASE IN QUESTION). APPELLATE DECISIONS ARE OFTEN REVIEWED BY THE ITALIAN SUPREME COURT, WHICH IS MORE INCLUSIVE IN WHAT IT REVIEWS THAN IS ITS U.S. EQUIVALENT. THUS, IF BERLUSCONI WERE CONVICTED, AND THAT CONVICTION WERE UPHELD ON APPEAL, THE CASE WOULD ALMOST CERTAINLY BE ACCEPTED BY THE SUPREME COURT FOR ADJUDICATION, LIKELY PUSHING A FINAL RULING ON THE CASE SEVERAL YEARS INTO THE FUTURE. BEARING THIS IN MIND, SEVERAL POSSIBLE SCENARIOS PRESENT THEMSELVES IN THE EVENT THAT BERLUSCONI IS CONVICTED THIS SUMMER AND THAT NO LEGISLATIVE SOLUTION HAS BEEN FOUND IN THE MEANTIME.

**19.** (C) IN DESCENDING ORDER OF LIKELIHOOD, BERLUSCONI COULD REBUFF CALLS FOR HIS RESIGNATION BY ARGUING--AS HE DID IN THE RECENTLY CONCLUDED PREVITI CASE (REF A)--THAT THE MILAN MAGISTRATES HANDED DOWN A "POLITICAL VERDICT," AND THAT HE HAS ULTIMATELY BEEN ACQUITTED ON ALL CHARGES IN EVERY TRIAL AGAINST HIM THAT HAS RUN ITS FULL COURSE. (NOTE: CHARGES

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INFO LOG-00	CIAE-00	SRPP-00	VC-00	TEDE-00	INR-00	IO-00
L-00	VCE-00	AC-01	NSAE-00	OMB-01	PA-00	PM-00
PRS-00	ACE-00	P-00	SP-00	SS-00	TRSE-00	T-00
USIE-00	PMB-00	DRL-01	G-00	SAS-00	/003W	

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P 071649Z MAY 03  
FM AMEMBASSY ROME  
TO SECSTATE WASHDC PRIORITY 9727  
INFO NATO EU COLLECTIVE PRIORITY  
AMCONSUL FLORENCE PRIORITY  
AMCONSUL MILAN PRIORITY  
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AGAINST BERLUSCONI HAVE BEEN DROPPED IN SEVERAL CASES BECAUSE THE APPLICABLE STATUTE OF LIMITATIONS HAD EXPIRED. END NOTE.) BERLUSCONI COULD USE ANY PENDING PARLIAMENTARY VOTE AS A DEVICE TO CALL FOR A VOTE OF CONFIDENCE IN HIS LEADERSHIP, WHICH WE BELIEVE HE WOULD WIN. IN ITALY,  
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PAROCHIAL CONCERN CAN OFTEN TURN VERY SERIOUS AND COULD STILL CAUSE A GOVERNMENT CRISIS. HOWEVER, NONE OF BERLUSCONI'S KEY COALITION PARTNERS HAS AN INTEREST IN BRINGING DOWN THE GOVERNMENT OVER BERLUSCONI'S LEGAL PROBLEMS. THIS IS ESPECIALLY TRUE OF THE NORTHERN LEAGUE'S UMBERTO BOSSI, WHO HAS HAD HIS OWN TROUBLED HISTORY WITH ITALIAN MAGISTRATES AND HAS COME TO BERLUSCONI'S DEFENSE. MOREOVER, POLLS CONTINUE TO SHOW THAT THE PUBLIC IS STILL RATHER NUMB TO BERLUSCONI'S LEGAL IMBROGLIO. NEARLY ALL CENTER-RIGHT VOTERS SHARE BERLUSCONI'S VIEW OF THE POLITICIZED JUDICIARY; EVEN A CONVICTION WOULD NOT CAUSE THEM

TO CHANGE THEIR VOTES.

¶10. (C) EARLY ELECTIONS ARE A POSSIBILITY AND BERLUSCONI IS USING THEM AS A RHETORICAL STICK TO THREATEN THE CENTER-LEFT, WHICH IS UNPREPARED TO GO TO THE POLLS. ONLY PRESIDENT CIAMPI IS EMPOWERED TO DISSOLVE PARLIAMENT AND CALL ELECTIONS, HOWEVER. WE BELIEVE HE WOULD BE LOATH TO DO SO BECAUSE IT WOULD DEMONSTRATE INSTITUTIONAL INSTABILITY AT A CRUCIAL MOMENT IN ITALY'S POLITICAL HISTORY AND THIS IS SOMETHING CIAMPI HAS WORKED HARD TO PROTECT AGAINST. BERLUSCONI COULD, HOWEVER, RESIGN, FORCING CIAMPI TO ACT. HOWEVER, IT SEEMS UNLIKELY TO US THAT HE WOULD DO SO IN THE MIDDLE OF THE EU PRESIDENCY. A RESIGNATION, FOLLOWED BY NEW ELECTIONS, WOULD BE MORE LIKELY IF A CONVICTION WERE HANDED DOWN IN 2004.

¶11. (C) FINALLY, WHILE THE OPPOSITION COULD CALL ON CIAMPI TO ORGANIZE A TECHNICAL GOVERNMENT TO USHER ITALY THROUGH ITS PRESIDENCY, THIS WOULD REQUIRE BERLUSCONI'S CONSENT AS LONG AS HE ENJOYS A PARLIAMENTARY MAJORITY. SUCH A SOLUTION WOULD CONFIDENTIAL

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BE A REVERSION TO PAST PRACTICE AND A SEVERE DEFEAT FOR ITALY'S ONGOING POLITICAL TRANSFORMATION -- AGAIN, WE THINK CIAMPI WOULD BE DISINCLINED TO PURSUE THIS ROUTE, NOT LEAST BECAUSE HE PUBLICLY REITERATED THAT NO DEFENDANT IS GUILTY UNTIL PROVEN SO IN A COURT OF LAST APPEAL.

¶12. (C) CIAMPI, FOR HIS PART, WILL CONTINUE HIS EFFORTS TO CREATE A CLIMATE OF MODERATION. HE, LIKE PERA AND CASINI, IS CONCERNED ABOUT ITALY'S STANDING -- NOT ONLY IN THE EVENT OF A CONVICTION BUT ALSO IN TERMS OF THE IMAGE CREATED BY THE CONTINUING STANDOFF BETWEEN BERLUSCONI, THE OPPOSITION, AND CERTAIN MAGISTRATES (REF C). CIAMPI HAS THEREFORE SIGNALLED THAT HE COULD ACCEPT A SOLUTION THAT PROTECTED THE HIGHEST REPRESENTATIVES OF THE STATE FROM PROSECUTION DURING THEIR TERMS IN OFFICE. HE WILL CONTINUE TO WORK BEHIND THE SCENES TO FORGE CONSENSUS AROUND THIS OUTCOME, WHICH MAY BECOME MORE PRACTICABLE FOLLOWING LOCAL ELECTIONS AT THE END OF MAY. EVEN THEN, HOWEVER, WE WOULD NOT PREDICT BIPARTISAN HARMONY, BUT AT MOST THE POTENTIAL ABSTENTION OF SOME OF THE MORE CENTRIST MEMBERS OF THE OPPOSITION.

COMMENT

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¶13. (C) CONVICTION OF THE ITALIAN PRIME MINISTER WOULD HARM NOT ONLY BERLUSCONI'S IMAGE, BUT ITALY'S AS WELL. UNFORTUNATELY, IT IS HARD TO ARGUE WITH PERA'S CONVICTION THAT A POLITICIZED MAGISTRACY HAS ALREADY DECIDED TO RELEASE A CONVICTION DECISION TIMED TO INFILCT MAXIMUM POLITICAL HARM ON THE CENTER-RIGHT MAJORITY: THE MILAN TRIBUNAL DID JUST THAT IN 1994, DURING BERLUSCONI'S FIRST TERM AS PM. DESPITE CONFIDENTIAL

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NERVOUSNESS AMONG HIS COLLEAGUES, HOWEVER, BERLUSCONI HAS DETERMINED TO STRIKE FIRST, AND HARD, IN AN ATTEMPT TO FRAME THE ARGUMENTS FOR THE PUBLIC IN HIS FAVOR, BEFORE A DECISION IN THE SME CASE IS RENDERED. SILVIO BERLUSCONI WILL NOT GO QUIETLY INTO THE NIGHT, AND OF THIS HE HAS GIVEN THE OPPOSITION FAIR NOTICE. THE PM IS OBVIOUSLY DETERMINED TO DEFEND HIMSELF, HIS POLITICAL LIFE, AND HIS HONOR, BUT WE WONDER IF HE IS NOT ALSO ACTING IN PART TO VINDICATE, POSTHUMOUSLY, BETTINO CRAXI.

¶14. (C) WE REMAIN RELATIVELY SANGUINE ABOUT THE STABILITY OF THE BERLUSCONI GOVERNMENT. ITS MAJORITY IS LARGE AND WE THINK IT WILL HOLD, EVEN IN THE EVENT OF A CONVICTION -- AT A MINIMUM, THROUGH THE LENGTHY APPEALS PROCESS. HOWEVER, IN THE AFTERMATH OF THE DIVISIONS IN EUROPE OVER IRAQ, AND IN LIGHT OF BERLUSCONI'S INSISTENCE ON HAVING ITALY PLAY AN EQUAL ROLE AT THE EUROPEAN TABLE -- EVEN WHEN IT MEANS DISAGREEING WITH HIS COUNTERPARTS -- THERE MAY BE THOSE OUTSIDE OF ITALY WHO WOULD NOT OBJECT TO SEEING THE PM IN AN UNFLATTERING PUBLIC SPOTLIGHT AS ITALY'S EU PRESIDENCY SEMESTER COMMENCES. THAT MAY BE THE GREATER DANGER IF THE

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INFO LOG-00 CIAE-00 SRPP-00 VC-00 TEDE-00 INR-00 IO-00  
L-00 VCE-00 AC-01 NSAE-00 OMB-01 PA-00 PM-00  
PRS-00 ACE-00 P-00 SP-00 SS-00 TRSE-00 T-00  
USIE-00 PMB-00 DRL-01 G-00 SAS-00 /003W  
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P 071649Z MAY 03  
FM AMEMBASSY ROME  
TO SECSTATE WASHDC PRIORITY 9728  
INFO NATO EU COLLECTIVE PRIORITY  
AMCONSUL FLORENCE PRIORITY

AMCONSUL MILAN PRIORITY  
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JUDICIAL TRAP THAT PERA AND OTHERS IN THE GOI FEAR UNFOLDS:  
WILL ITALY BE ABLE TO REGISTER A SUCCESSFUL EU PRESIDENCY,  
AND HELP US WITH OUR EU AGENDA, WITH ITS PRIME MINISTER  
TARNISHED BY A GUILTY VERDICT?

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